

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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Federal Communications Commission
Office of Secretary

In the Matter of

Implementation of the Local Competition
Provisions in the Telecommunications Act
of 1996

Interconnection between Local Exchange
Carriers and Commercial Mobile Radio
Service Providers

CC Docket No. 96-98

CC Docket No. 95-185

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**Reply Comments of the
Independent Data Communications Manufacturers Association**

The Independent Data Communications Manufacturers Association ("IDCMA"), by counsel, hereby replies to the petitions for reconsideration and subsequent comments filed in response to the Commission's First Report and Order implementing the local competition provisions of the Telecommunications Act of 1996.¹

INTRODUCTION AND SUMMARY

IDCMA represents the interests of independent communications equipment manufacturers, which develop and supply much of the equipment that new entrants in the local exchange market will use to provide innovative new services to end-users.

¹ See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, FCC 96-325 (rel. Aug. 8, 1996) ("First Report and Order").

IDCMA requests that the Commission reject those petitions that seek to eliminate competing providers' right to access existing copper loop facilities. IDCMA supports those petitioners that request the Commission to reconsider its decision to defer action on subloop unbundling. IDCMA also supports those parties that request the Commission to require incumbent local exchange carriers ("LECs") to allow packet-based equipment employing packet, frame, or cell technology to be collocated. In addition, IDCMA urges the Commission to reject those petitions that seek to restrict the Commission's procompetitive collocation policies.

I. THE COMMISSION SHOULD REJECT PROPOSALS THAT WOULD LIMIT NEW ENTRANTS' ABILITY TO ACCESS EXISTING COPPER LOOP CONFIGURATIONS

As IDCMA observed earlier in this proceeding,² the ability of competing providers to obtain access to existing local loop facilities consisting of dedicated copper wire is critical to the use of new technologies that enable deployment of innovative services. Many paired technologies, including ADSL, HDSL, xDSL, and DOV technology, require "end-to-end" copper loops that are free from electronics equipment such as digital loop carrier systems.³ Two commenters raise issues relevant to competing providers' ability to gain access to such dedicated copper loops. IDCMA requests the Commission to reject these proposals, which would limit, rather than expand, the development of local competition and the deployment of innovative services.

² See Reply Comments of the Independent Data Communications Manufacturers Association at 11 (filed May 30, 1996).

³ As market forces demand more efficient, innovative communications services, deployment of these paired technologies will extend the useful life of the existing copper plant.

Sprint urges the Commission to redefine the local loop element as an electrical or optical transmission path, rather than a facility.⁴ The First Report and Order, however, properly found that "exclusive control over network facilities dedicated to particular end users provides [competing providers] the maximum flexibility to offer new services to such end users."⁵ Defining the network element as a transmission path, the Commission concluded, would not provide a carrier with exclusive access to a customer. Rather, this approach would provide multiple carriers with simultaneous access to a loop facility which, in turn, "would preclude the provision of certain services in favor of others."⁶

The Commission specifically observed that, under the "transmission path" approach, one carrier's provision of voice-grade service would preclude another carrier's use of that same loop for digital service using ISDN or ADSL technology.⁷ This would prevent competing providers from offering innovative services which incumbent carriers do not now offer. Sprint's petition fails to recognize, let alone resolve, this critical concern. IDCMA, therefore, joins the Association for Local Telecommunications Services ("ALTS") in requesting that the Commission reject Sprint's request.⁸

NYNEX takes a different tack. NYNEX urges the Commission to "clarify" that competing providers cannot request a specific technology or facility. Allowing competing

⁴ See Sprint's Petition for Limited Reconsideration and/or Clarification at 2-4 (filed Sept. 30, 1996).

⁵ First Report and Order at ¶ 385.

⁶ Id.

⁷ See id.

⁸ See Reply of the Association for Local Telecommunications Services to Petitions for Clarification and Reconsideration at 18-19 (filed Oct. 31, 1996) ("ALTS Reply").

providers to do so, it contends, "would eliminate the LEC's ability to evolve its network."⁹ IDCMA supports the deployment of innovative network technology. Such deployment, however, should not serve as a pretext to restrict or eliminate the types of services that competing providers may offer.

The First Report and Order makes clear that an incumbent carrier cannot use claims of technical innovation to deprive potential new entrants of access to facilities necessary to provide services. Specifically, the Commission ruled that incumbent LECs could not use integrated digital loop carrier ("IDLC") technology -- which allows a carrier to aggregate loops at a remote point and deliver multiplexed traffic to a switch -- "to 'hide' loops from competitors."¹⁰ Rather, the Commission required that an incumbent LEC using IDLC technology must unbundle the multiplexed loops if a competing provider so requests.

The Commission also concluded that incumbent LECs "are required to provide access" to various categories of loop facilities, including two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops conditioned to provide services using ISDN, ADSL, and HDSL technology, provided such facilities are technically feasible.¹¹ The Commission properly found that the ability of new entrants to offer a variety of loop configurations "in competition with incumbent LECs" is critical to the development of local

⁹ See NYNEX Comments at 4 (filed Oct. 31, 1996).

¹⁰ First Report and Order at ¶ 383.

¹¹ Id. at ¶¶ 380 & 381 (emphasis added). Similarly, the Commission should ensure that new entrants have access to dark fiber. Dark fiber, after all, is no different than unassigned copper wire pairs. Therefore, IDCMA supports AT&T's position that dark fiber qualifies as a network element. See Petition of AT&T Corp. for Reconsideration and/or Clarification at 35-37 (filed Sept. 30, 1996).

competition.¹² Many competing providers plan on winning customers by offering cutting-edge technologies and services which require copper-only loops. If the Commission were to allow incumbent LECs to use claims of "technological innovation" to unilaterally dictate the types of loop facilities available, new entrant's ability to provide innovative services would, in effect, lie in the hands of their biggest competitors, the incumbent carriers.

The Commission should reject any proposal that would force competitors to accept only those loop configurations that an incumbent LEC chooses to provide. As incumbent LECs deploy copper with electronics and fiber with electronics as part of their loop facilities, the Commission should prohibit them from using such new technology as a means to eliminate their competitors' ability to provide services. For example, if a competing provider offers service using ADSL technology along a copper-only loop, and the incumbent LEC decides to deploy a fiber-based feeder line, the incumbent LEC should be required to leave embedded sufficient copper feeder lines to satisfy existing demand.¹³

II. THE PETITIONS DEMONSTRATE THAT SUBLOOP UNBUNDLING DOES NOT RAISE LEGITIMATE NETWORK RELIABILITY OR SERVICE QUALITY CONCERNS

IDCMA supports several petitioners in requesting that the Commission reconsider its decision to defer action on the unbundling of subloop network elements.¹⁴ The First Report

¹² Id. at ¶ 380.

¹³ In this situation, subloop unbundling would enable incumbent LECs to upgrade their loop feeder facilities while allowing competitive providers to maintain existing services by obtaining access to copper loop distribution lines and cross-connecting to their own transmission facilities. See Part II, infra.

¹⁴ See Petition for Reconsideration of MCI Telecommunications Corporation at 16-20 (filed Sept. 30, 1996) ("MCI Petition"); Petition for Partial Reconsideration and Clarification (continued...)

and Order identified two concerns raised by incumbent LECs that oppose subloop unbundling: network reliability concerns resulting from competitors' access to subloop components and degradation of service quality because of dispersed responsibility for loop performance.¹⁵ As the petitions demonstrate, both concerns are unfounded.

The communications industry is all too familiar with carrier efforts to use network reliability claims as a pretext to thwart competition. In the manufacturing realm, for example, incumbent carriers repeatedly have made network reliability claims which have served to slow the development of competition. Indeed, such claims date as far back as the landmark Hush-A-Phone decision, in which the Bell System went so far as to argue that a privacy-enhancing cup-shaped device attached to the mouthpiece of a hand-set could impair the public switched network.¹⁶ Thus, while network reliability is an important concern, the Commission should consider the incumbent LECs' claims with an appropriate level of scrutiny.

In response to concerns that access to subloop elements by competitors' technicians would jeopardize network reliability, MFS clarifies that physical access to the incumbent LEC's loop equipment or facilities is not necessary to gain access to subloop elements. An incumbent LEC, for example, could simply cross-connect its loop distribution facilities to the competing provider's equipment or facilities, without providing those competitors direct access to any subloop element. As MFS correctly notes, "[i]t is simply absurd to suggest

¹⁴(...continued)

of MFS Communications Company, Inc. at 9-11 (filed Sept. 30, 1996) ("MFS Petition"); Petition for Clarification and Reconsideration by the Association for Local Telecommunications Services at 11-12 (filed Sept. 30, 1996) ("ALTS Petition").

¹⁵ See First Report and Order at ¶ 391.

¹⁶ See Hush-A-Phone Corp. v. United States, 238 F.2d 266, 268 (D.C. Cir. 1956), on remand, 22 F.C.C. 112 (1957).

that subloop unbundling requires allowing . . . personnel physical access to the LEC's loop plant, when no other form of network element unbundling raises such concerns."¹⁷ Similarly, concerns that subloop unbundling would prevent LECs' from fulfilling their responsibility for loop performance are, as MCI notes, "merely a red herring."¹⁸ If a competing provider purchases an unbundled loop distribution element, for example, that element would no longer serve the incumbent LEC's customers, and its performance would no longer affect the incumbent LEC network. Furthermore, ALTS adds that new entrants have the same -- if not greater -- incentives as incumbent LECs to ensure a high level of service quality.¹⁹

Several incumbent LECs make other claims to cloud the matter of subloop unbundling. GTE, for example, contends that subloop unbundling is "generally technically infeasible."²⁰ NYNEX asserts that such unbundling is not possible because a standard configuration of subloop elements does not exist.²¹ These claims, however, ignore the Commission's finding that incumbent LECs must offer specific evidence of technical infeasibility to justify a refusal to provide access to network elements.²² IDCMA, therefore, urges the Commission to reject these incumbent LECs' claims and instead adopt the ALTS proposal, under

¹⁷ MFS Petition at 10.

¹⁸ MCI Petition at 18.

¹⁹ See ALTS Petition at 11.

²⁰ Opposition and Comments of GTE at 27 (filed Oct. 31, 1996).

²¹ See NYNEX Comments at 26.

²² See First Report and Order at ¶ 203.

which an incumbent LEC must unbundle subloop elements unless, "using verified vendor information," it demonstrates that unbundling is technically infeasible.²³

III. THE COMMISSION SHOULD AFFIRM A BROAD COLLOCATION POLICY

A. The Comments Demonstrate That The Commission Should Require Incumbent LECs To Allow Packet-Based Equipment To Be Collocated

IDCMA supports those parties that request the Commission to recognize that incumbent LECs must allow collocation of packet-based equipment.²⁴ Interpreting Section 251(c)(6) of the Telecommunications Act, the First Report and Order concluded that incumbent LECs are obligated to collocate only that equipment used for interconnection or access to unbundled network elements.²⁵ The Commission cited multiplexers and optical terminating equipment as examples.²⁶ The Commission, however, found that switching equipment "does not appear [to be] used for actual . . . interconnection or access," and thus incumbent LECs are not obligated to collocate such equipment.²⁷

The Commission's decision is inconsistent with its acknowledgment that "modern technology has tended to blur the line between switching equipment and multiplexing equipment, which we permit to be collocated."²⁸ As MFS stated, "this 'blurred line' . . . is especially

²³ ALTS Petition at 12 (emphasis omitted).

²⁴ See MFS Petition at 11-14; ALTS Reply at 22-23.

²⁵ See First Report and Order at ¶¶ 579-581.

²⁶ See id. at ¶ 580.

²⁷ Id. at ¶ 581.

²⁸ Id.

troublesome in the area of digital, packet-based communications."²⁹ Indeed, packet-based technologies such as frame relay and cell-based Asynchronous Transfer Mode use equipment that performs a function more similar to statistical multiplexers than to traditional, circuit-switching equipment. Such equipment combines packets from various connections onto high-capacity transmission facilities and routes the information to other locations in the network. In order for new entrants to be competitive with the incumbent LECs, it is essential that they enjoy network efficiencies such as those that can be provided by collocating equipment with statistical multiplexing and routing functions. Otherwise, competing providers will be forced to devote substantial resources to additional transmission facilities or equipment. As a result, IDCMA requests that the Commission adopt the MFS position and provide for the collocation of packet-based equipment "used to provide an interface between the incumbent LEC's network or unbundled network elements and the requesting carrier's packet transmission facilities."³⁰

**B. The Petitions To Restrict Collocation Are Inconsistent With
The Telecommunications Act**

IDCMA opposes those petitioners that seek to artificially limit the type of LEC-controlled premises at which collocation must be offered.³¹ The LEC Coalition requests that the Commission remove vaults, huts, and other small field structures from its definition of "premises" for collocation purposes.³² There is no basis for categorically excluding these locations. As even the LEC Coalition acknowledges, the First Report and Order provides that

²⁹ MFS Petition at 11.

³⁰ Id. at 12.

³¹ See Petition of the Local Exchange Carrier Coalition for Reconsideration and Clarification at 5-6 (filed Sept. 30, 1996) ("LECC Petition"); NYNEX Comments at 6.

³² See LECC Petition at 6.

"LECs are not required to physically collocate equipment in locations where not practical for technical reasons or because of space limitations."³³ Thus, to the extent that collocation is not technically feasible, it is not required at these locations.

Furthermore, IDCMA joins those commenters³⁴ that urge the Commission to reject the LEC Coalition's request that the Commission eliminate the right of collocating competitors to interconnect with other collocaters on the premises of an incumbent LEC.³⁵ As MCI noted, the First Report and Order correctly concluded that the statute does not bar such a requirement.³⁶ Moreover, the Commission properly found that "such interconnection of collocated equipment will foster competition by promoting efficient operation."³⁷

³³ First Report and Order at ¶ 575.

³⁴ See MCI Communications Corporation Response to Petitions for Reconsideration at 23 (filed Oct. 31, 1996) ("MCI Reply"); ALTS Reply at 21-22; AT&T Opposition to and Comments on Petitions for Reconsideration and Clarification of First Report and Order at 6-7 (filed Oct. 31, 1996).

³⁵ See LECC Petition at 6-8.

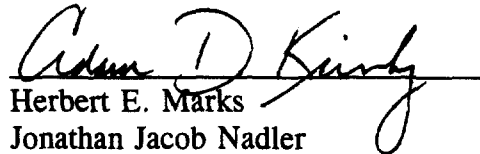
³⁶ See MCI Reply at 23.

³⁷ First Report and Order at ¶ 594.

CONCLUSION

For the foregoing reasons, IDCMA supports those petitioners and commenters that request the Commission to: ensure that new entrants retain the ability to access existing copper loop configurations; reconsider its decision to defer action on subloop unbundling; require incumbent LECs to provide for the collocation of packet-based equipment; and reject those petitions that seek to restrict the collocation policy.

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November 12, 1996

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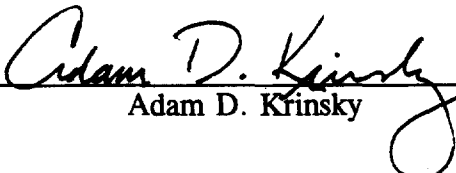
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